



# Complying with U.S. Export Laws: An Overview for Businesses

April 13, 2010 • Wilmington, Ohio



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Presented by:





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**Marcia Brandstadt – Cincinnati/Hamilton County**  
Cincinnati Director  
[Marcia.Brandstadt@mail.doc.gov](mailto:Marcia.Brandstadt@mail.doc.gov)

**Jim Cunningham – Butler/Warren Counties**  
International Trade Specialist  
[Jim.Cunningham@mail.doc.gov](mailto:Jim.Cunningham@mail.doc.gov)

**Debbie Dirr - Dayton**  
Senior International Trade Specialist  
[DDirr@mail.doc.gov](mailto:DDirr@mail.doc.gov)

**Kara Sweeney – N Kentucky/Clermont County**  
International Trade Specialist  
[Kara.Sweeney@mail.doc.gov](mailto:Kara.Sweeney@mail.doc.gov)

**U.S. Commercial Service - Cincinnati**  
**U.S. Department of Commerce**

36 East 7<sup>th</sup> Street, #2650  
Cincinnati, Ohio 45202  
Ph: (513) 684-2944  
Fx: (513) 684-3227  
[www.export.gov](http://www.export.gov)  
[Office.Cincinnati@mail.doc.gov](mailto:Office.Cincinnati@mail.doc.gov)



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Sponsor, Exhibitors  
& Marketing Co-Sponsors



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# Complying with U.S. Export Laws



## AGENDA

- |                        |   |
|------------------------|---|
| <b>8:00am-8:30am</b>   | <b>Registration &amp; Continental Breakfast</b>   |
| <b>8:30am-8:45am</b>   | <b>Welcome &amp; Opening Remarks</b>  |
| <b>8:45am-10:00am</b>  | <b>Overview of Export Administration Regulations (EAR)</b> <ul style="list-style-type: none"><li>• Understanding the EAR</li><li>• License Exceptions</li><li>• Deemed Exports</li></ul> <p>SPEAKER: - Sharron Cook, Senior Export Policy Analyst, Bureau of Industry and Security (BIS), U.S. Department of Commerce</p>   |
| <b>10:00am-10:20am</b> | <b>Networking Break</b>   |
| <b>10:20am-11:30am</b> | <b>Enforcement and Compliance</b> <ul style="list-style-type: none"><li>• Overview of OEE...Investigative Priorities</li><li>• Criminal and Administrative Penalties/Denial Orders</li><li>• Criminal Case Examples</li><li>• Voluntary Disclosures</li><li>• Red Flag Guidance for Exporters</li><li>• Regulatory Requirements (Record-keeping, etc.)</li></ul> <p>SPEAKER: - Rick Shimon, Special Agent in Charge, Washington Field Office Bureau of Industry and Security (BIS), U.S. Department of Commerce</p> |
| <b>11:45pm-12:45pm</b> | <b>Working Lunch</b> <p>Q&amp;A for Attendees with Specific Questions for Presenter(s)</p>  |
| <b>12:45pm-2:00pm</b>  | <b>U.S. Department of the Treasury: Export Regulations &amp; Exporter Responsibilities</b> <ul style="list-style-type: none"><li>• How to Develop an Effective OFAC Compliance Program</li></ul> <p>SPEAKER: Rachel Nagle, Compliance Officer, Office of Foreign Assets Controls (OFAC), U.S. Department of Treasury</p>  |
| <b>2:00pm-3:00pm</b>   | <b>Export Compliance, Filing of the EEI and Using AES</b> <ul style="list-style-type: none"><li>• Electronic Export Information (EEI) &amp; Automated Export System (AES) and When It's Required</li><li>• Recordkeeping Requirements</li></ul> <p>SPEAKER: Craig Vette, Port Director, U.S. Customs and Border Protection, Columbus, Ohio</p>  |
| <b>3:00pm-3:20pm</b>   | <b>Networking Break</b>   |
| <b>3:20pm-4:10pm</b>   | <b>Export Enforcement Panel (Audits, Recent Updates &amp; Q&amp;A)</b> <ul style="list-style-type: none"><li>• Office of Foreign Assets Control (OFAC)</li><li>• BIS Office of Export Enforcement (BIS)</li><li>• U.S. Customs and Border Protection (CBP)</li></ul>  |

### PANELISTS:

Office of Foreign Assets Control, U.S. Department of the Treasury  
Bureau of Industry and Security, U.S. Department of Commerce  
U.S. Customs and Border Protection

# Complying with U.S. Export Laws



## Title Sponsor



## Exhibitors

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U.S. Department of Commerce – U.S. Commercial Service

State of Ohio- Global Markets Division

European American Chamber of Commerce

Miami Valley International Trade Association

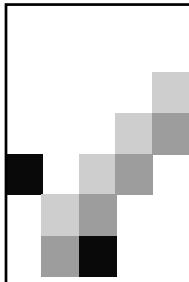
Clermont County Office of Economic Development

## Marketing Co-Sponsors



Department of  
Development  
Global Markets Division





Department of Commerce  
Bureau of Industry and  
Security

**Sharron Cook**  
**Senior Export Policy**  
**Analyst**

## BIS Mission

- To advance U.S. national security, foreign policy, and economic interests.
  - BIS is responsible for implementing and enforcing the Export Administration Regulations (EAR), which regulates ...
  - exports, reexports, and transfers of most commercial and dual-use items "subject to the EAR."
  - in addition to certain activities of U.S. persons.

## Items

- Items = Commodities, technology, and software
- Dual-use items
  - Items that have both commercial and military or proliferation applications.
  - This term is often used *informally* to describe items that are subject to the EAR.
- Commercial items
  - Predominately used for civilian purposes

## Why Do We Control Exports?

- National Security
- Foreign Policy
  - Anti-terrorism
  - Crime control
  - Regional Stability
- Non-Proliferation
  - Nuclear weapons
  - Chemical/biological weapons
  - Rocket Systems (including missiles and UAVs)

## What's the Big IDEA?

- I – item
- D – destination
- E – end-use/user
- A - activity

Based on information that is  
"known" to the exporter

## Where are the Exits?

- License
  - written authorization by BIS
- License Exception
  - authorization that allows you to export or reexport if you meet certain criteria without applying for a license
- No License Required (NLR)
  - Item is subject to the EAR, but does not require a license
- Not subject to the EAR

## What does “Subject to the EAR” mean?

- Under regulatory jurisdiction of the EAR
  - Remember there are other government agencies that administer export controls
- “Subject to EAR” does not mean that an export license is automatically required

## Subject to the EAR

### Items **in** the United States, except:

- Publicly available technology & software (excluding encryption)
- Items subject to the exclusive jurisdiction of another Federal Department or Agency
- Publications that are artistic or non-technical in nature

## Subject to the EAR

- Items located **outside** the United States:
  - U.S.-Origin items wherever located
  - Certain foreign-made items, if:
    - The foreign-produced item is the direct product of U.S. technology or software
    - The value of the U.S. content exceeds the *De minimis* percentage
      - Supplement 2 to part 734 – *De minimis* calculation

## Subject to the EAR

### U.S. Persons and Foreign Persons:

- Certain activities of U.S. persons (section 744.6)
  - Related to proliferation concerns
- Activities of U.S. or foreign persons prohibited by any order issued under the EAR.

## Proliferation Activities Subject to the EAR

- Nuclear (744.2)
  - Nuclear explosive device, components, or subsystems
- Rocket Systems (744.3)
  - including ballistic missiles systems, space launch vehicles and sounding rockets
- Unmanned Air Vehicles (UAVs) (744.3)
  - including cruise missile systems, target drones and reconnaissance drones
- Chemical and Biological Weapons (744.4)
- Foreign maritime nuclear propulsion (744.5)

## Other End-use/user restrictions

- Certain exports and reexports of general purpose microprocessors for “military end-uses” and to “military end-users” (744.17)
- Certain low level items for military end-uses in the People's Republic of China (PRC) (744.21)

## Jurisdiction

- Technology and Software normally follow the jurisdiction of the related hardware
- Some technology is controlled by State even when hardware is with Commerce
- Application of dual-use technology to military situation may be Defense Service

## Commerce Control List Part 774, Supplement No. 1

- Contains a list of approx. 500 entries subject to the licensing authority of BIS
- Each entry is called an Export Control Classification Number (ECCN)
- Most ECCNs describe items in terms of technical parameters

## CCL Origins

- Wassenaar Arrangement
  - National Security-controlled items
- Missile Technology Control Regime (MTCR)
  - Missile Technology-controlled items
- Australia Group (AG)
  - Chemical/Biological Weapons-controlled items
- Nuclear Suppliers Group (NSG)
  - Nuclear Nonproliferation-controlled items

## Structure of an ECCN

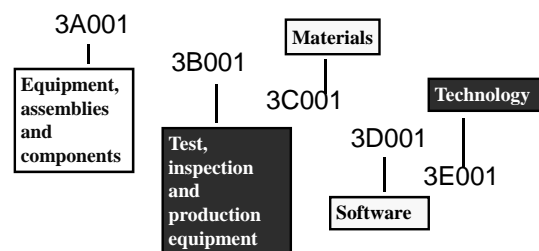
**3 A 001**

**3** CATEGORY  
**A** PRODUCT GROUP  
**001** TYPE OF CONTROL

## Categories

- 0 Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
- 1 Materials, Chemicals, Microorganisms & Toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 Telecommunications (Part 1)  
& Information Security (Part 2)
- 6 Sensors and Lasers
- 7 Navigation and Avionics
- 8 Marine
- 9 Propulsion Systems, Space Vehicles and Related Equipment

## Product Groups





## EAR99 Items

- This designation may be found at the end of each of the 10 categories of the CCL:

**“EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number *EAR99*.”**



## Deemed Export/Reexport

- Release of technology or source code to a foreign national in the U.S. or abroad

- ☐ Considered to be an export to that person's home country
- ☐ Does not apply to U.S. Citizens, individuals granted permanent resident status, protected individuals



## Technology and Software Transfers

- Includes transfers regardless of the media
  - ☐ disk, blueprints, hardcopy, flash/thumb drives, etc.
- Includes electronic transfers
  - ☐ via the internet downloads, E-mail, fax,
- Includes direct transfers
  - ☐ consultations, phone conversations, tours, instruction & seminars, application of knowledge abroad

## Technology Definitions under the EAR

- Technology: Specific information for “development”, “production”, or “use” of a product. The information takes the form of “technical data” or “technical assistance”.
  - ☐ **Technical assistance**—May take forms such as instruction, skills training, working knowledge, consulting services.
  - ☐ **“Technical data”**—May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

## Scope of Technology Controls

- General Technology Note Supplement No. 2 to part 774
  - ☐ “Development”
  - ☐ “Production”
  - ☐ “Use”



## “Development”

- “Development” is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts

## "Production"

- Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.



## "Use"

- Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.



## Parties to the Transaction

### *Lists to Check*

- ☐ Denied Persons
- ☐ Unverified List
- ☐ Entity List
- ☐ General Order No. 3
- ☐ OFAC Lists
- ☐ Debarred List

- Changes are published in the Federal Register when issued.

Available at:  
[www.bis.doc.gov](http://www.bis.doc.gov)

## General Prohibition 10

*All items subject to the EAR*

Proceeding with a transaction with knowledge that a violation has occurred or is about to occur



## Assistance

**Bureau of Industry and Security  
Outreach & Educational Services**  
14th St. & Pennsylvania Ave. NW  
Washington, DC 20230

Ph. (202) 482-4811  
Fax (202) 482-2927

### **Western Regional Offices**

3300 Irvine Avenue, Suite 345  
Newport Beach, CA 92660

Ph. (949) 660-0144  
Fax (949) 660-9347

160 W. Santa Clara St, Suite 725  
San Jose, California 95113

Ph. (408) 998-8806  
Fax (408) 998-8677

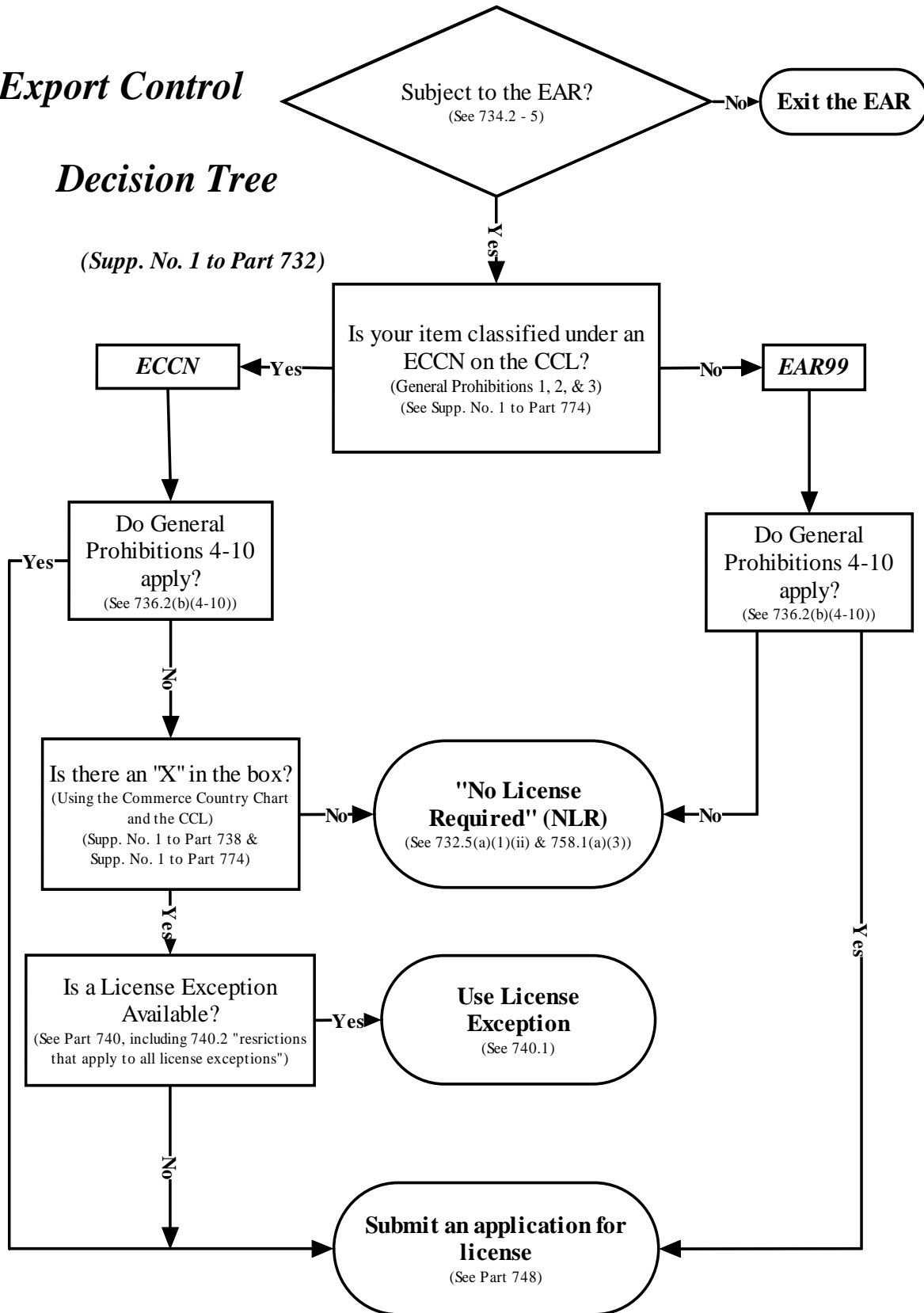
## BIS On-line Training Room

- Export Control Basics
- Classifying your item and determining if you need a license
- Introduction to deemed exports
- Archived Webinars
  - ☐ Embargoes and other Sanctions
  - ☐ Intermediate deemed exports
- FREE at [www.bis.doc.gov](http://www.bis.doc.gov)

# Export Control

## Decision Tree

(Supp. No. 1 to Part 732)



## PART 740 LICENSE EXCEPTIONS<sup>1</sup>

**740.3 Shipments of limited value (LVS)** authorizes the export and reexport for all destinations in Country Group B, provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry, provided your transaction meets *all* of the criteria in 740.3.

**740.4 Shipments to Country Group B countries (GBS)** authorizes exports and reexports to Country Group B of those commodities that require a license for national security reasons only and identified by “GBS - Yes” on the CCL, provided your transaction meets *all* of the criteria in 740.4.

**740.5 Civil end-users (CIV)** authorizes exports and reexports of items that require a license for national security reasons only and identified by “CIV - Yes” on the CCL, provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea, provided your transaction meets *all* of the criteria in 740.5.

**740.6 Technology and software under restriction (TSR)** authorizes exports and reexports to Country Group B of technology and software that require a license for national security reasons only and identified by “TSR - Yes” in entries on the CCL, provided a written assurance is obtained from the consignee before exporting, provided your transaction meets *all* of the criteria in 740.6.

**740.7 Computers (APP)** authorizes exports and reexports of computers, and exports of technology and software for computers, incl. “electronic assemblies” and specially designed components therefor controlled by ECCNs 4A003, 4D001 and 4E001 for consumption in Computer Tier countries as described in 740.7, provided your transaction meets *all* of the criteria in 740.7.

**740.8 Key Management Infrastructure (KMI)** authorizes the export and reexport of certain encryption software and equipment, provided your transaction meets *all* of the criteria in 740.8.

**740.9 Temporary imports, exports, and reexports (TMP)** authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software, provided your transaction meets *all* of the criteria in 740.9.

**740.10 Service and replacement of parts and equipment (RPL)** authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment, provided your transaction meets *all* of the criteria in 740.10.

**740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)** authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; and international inspections under the Chemical Weapons Convention, provided your transaction meets *all* of the criteria in 740.11.

**740.12 Gift parcels and humanitarian donations (GFT)** authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale), provided your transaction meets *all* of the criteria in 740.12.

**740.13 Technology and software unrestricted (TSU)** authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and unrestricted encryption source code, provided your transaction meets *all* of the criteria in 740.13.

**740.14 Baggage (BAG)** authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section, provided your transaction meets *all* of the criteria in 740.14.

**740.15 Aircraft and vessels (AVS)** authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents, provided your transaction meets *all* of the criteria in 740.15.

**740.16 Additional permissive reexports (APR)** authorizes reexports from Country Group A:1 or from cooperating countries, provided your transaction meets *all* of the criteria in 740.16. In addition, it authorizes reexports to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 or cooperating country, provided your transaction meets *all* of the criteria in 740.16.

**740.17 Encryption commodities and Software (ENC)** authorizes the export and reexport of encryption items classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, 5B002, 5D002 and 5E002, provided your transaction meets *all* of the criteria in 740.17.

**740.18 Agricultural commodities (AGR)** authorizes the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the criteria in 740.18.

**740.19 Consumer Communications Devices (CCD)** authorizes the export or reexport of certain specified commodities and software, such as certain types of computers, phones, TVs, cameras, etc., to Cuba subject to certain specified conditions.

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<sup>1</sup> Remember to check if any of the license exception restrictions in §740.2 apply prior to using a license exception.

## **10 GENERAL PROHIBITIONS - PART 736 OF THE EAR**

You may not engage in the following without prior authorization from BIS:

### **No. 1 - Export or reexport controlled items to listed countries**

You may not, without prior authorization from BIS, export or reexport items subject to the EAR, when the item requires an export or reexport license to the destination country.

### **No. 2 - Reexport or export from abroad foreign-made items incorporating more than a de minimis amount of controlled U.S. content**

You may not, without prior authorization from BIS, reexport or export from abroad foreign-made items that incorporate more than the *de minimis* percentage of controlled U.S.-origin content.

### **No. 3 - Reexport or export from abroad foreign produced direct product of U.S. technology or software to a country listed in Country Group D:1 or Cuba**

You may not, without prior authorization from BIS, reexport or export from abroad national security controlled foreign-made items that are the direct product of national security controlled U.S.-origin technology or software, when the foreign-made item is destined to Cuba or a country listed in Country Group D:1 of Supplement No. 1 to part 740 of the EAR.

### **No. 4 - Engage in actions prohibited by a denial order**

You are responsible for making sure you do not violate a denial order. BIS maintains a list of people who have violated the EAR. These people are subject to either a standard or non-standard denial order. This list can be found on the BIS website at [www.bis.doc.gov](http://www.bis.doc.gov)

### **No. 5 - Export or reexport to prohibited end-users or end-uses**

You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.

### **No. 7 - Support of proliferation activities**

If you are a U.S. person as that term is defined in 744.6(c) of the EAR, you may not engage in activities prohibited by part 744.6 (a) or (b) of the EAR, which prohibits the performance, without a license from BIS, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further in part 744, as well as technical assistance related to encryption items.

### **No. 8 - In transit shipments and items to be unladen from vessels or aircraft (Intransit)**

You may not export or reexport an item through a country listed in this section unless a license or license exception authorizes such an export or reexport directly to such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

There are 22 countries that GP 8 applies to Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

### **No. 9 - Violate any order, terms, and conditions**

You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR.

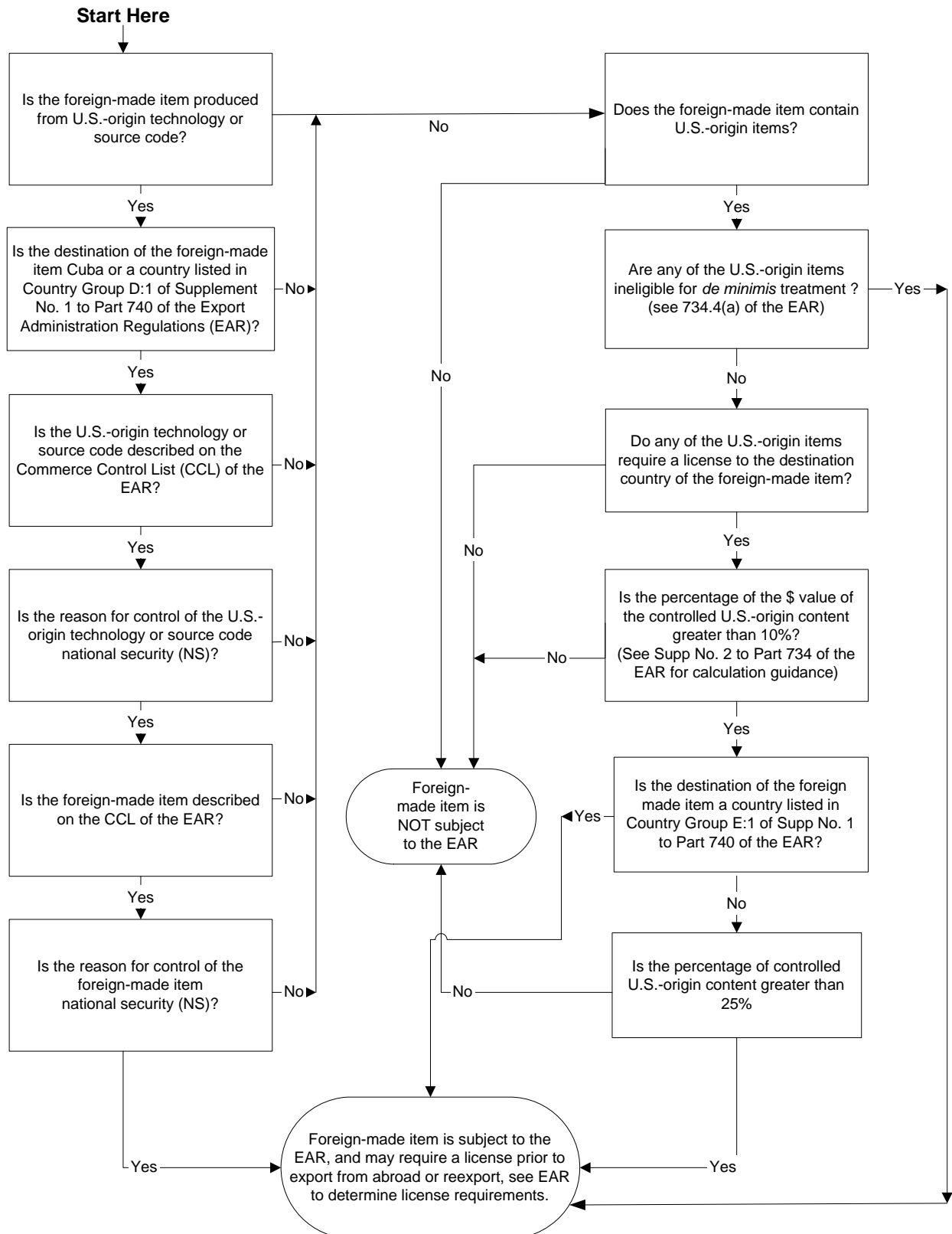
### **No. 10 - Proceed with a transaction with knowledge that a violation has occurred or is about to occur.**

You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur in connection with the item.

.....**De minimis Rules** (of the minimum)  
( §734.4 and Supplement No. 2 to part 734 of the EAR)

- IF ...
  - Foreign-made commodity incorporates controlled U.S.-origin commodities
  - Foreign-made commodity is 'bundled' with controlled U.S.-origin software, \_
  - Foreign-made software is commingled with controlled U.S.-origin software, \_or
  - Foreign-made technology is commingled with controlled U.S.-origin technology,
- THEN... it is subject to the EAR if the U.S.-origin controlled content exceeds:
  - 10% for Cuba, North Korea, Sudan, Syria & Iran
  - 25% for all other destinations
- **“Controlled content”** = US-origin items that require a license to the ultimate destination of the foreign product.
  - EAR99 items are considered “controlled content” for certain sanctioned countries.
  - Fair Market Value of the “controlled content” is needed to calculate *de minimis* percentage
  - **Content that you don’t have to count:**
    - License Exception GBS or NLR eligible items
    - Foreign manufactured item is the 2nd incorporation of U.S. origin items
- **Content that is not eligible for de minimis treatment**
  - Certain U.S. origin components of high performance computers
  - Encryption 5E002, and encryption commodities and software that don't meet the eligibility criteria in §734.4(b)
  - QRS 11 if in commercial standby instrument system or commercial aircraft w/such system
- **U.S. items are 'incorporated' when all of the following conditions are met:**
  - They are essential to the functioning of the foreign equipment,
  - They are customarily included in the sale of foreign-made items, and
  - They are reexported with the foreign produced item.
- **Bundling**
  - Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
    - Example: For instance, printer driver software is generally not incorporated into a printer but is customarily delivered with the printer so that it may be loaded onto the computer to which it will be connected.
  - Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).
- **One-time report required for technology**
  - Percentage of U.S. content by value
  - Description of your calculations
  - Values, assumptions, methodologies
  - Export price of U.S. content
  - Description and fair market value of the foreign technology
- **If over the de minimis limit ...**
  - Classify the foreign product (self classification vs BIS classification)
  - Determine License Requirements
  - Determine License Exception eligibility
  - Obtain any necessary authorization

# Is Your Foreign-made Item Subject to the Export Administration Regulations?



## **Publicly Available Technology and Software**

Publicly available technology and software is information that has been or will be “published” and generally accessible to the interested public in any form. (Except encryption technology and software)

### **734.7 Published information and software**

- Publication in periodicals, books, print, electronic, or any other media
- To any member of the public or to a community of persons interested in the subject matter
- Free or at a price that does not exceed the cost of reproduction and distribution
- Ready availability at libraries open to the public or at university libraries
- Release at an open conference, meeting, seminar, trade show, or other open gathering.
- Patents and open (published) patent applications available at any patent office

### **734.8 Information resulting from fundamental research**

- Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.
- NOT proprietary research or industrial development or production research where the results will be restricted for proprietary reasons or specific national security reasons

### **734.9 Educational information**

- Is information that's taught in universities or academic institutions.

### **734.10 Patent applications**

(Certain information that are contained in patent applications)

- Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;
- Information contained in a patent application for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office
- Information contained in a patent application when sent to a foreign country before filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.



## **DIRECT PRODUCT RULE**

### **General Prohibition No. 3 - Reexport and export from abroad of foreign produced direct product of U.S. technology or software (D:1 and Cuba)**


- Country scope of prohibition - you may not reexport or export from abroad items subject to GP 3 to Cuba (E:2), or a destination in country group D:1 (listed in part 740 supp. 1), unless authorized by a license or LE.

## EXPORT ENFORCEMENT

### *Industry – Government Partnership*





**Rick Shimon**  
**Special Agent In Charge**  
**Washington Field Office**



## National Security


*A shared responsibility between the  
Exporting Community and Law Enforcement*





## Export Enforcement

...task is to prevent the export of  
U.S. goods and technology that  
may be used by rogue states or  
terrorists to make chemical,  
biological or nuclear weapons



**OEE Priorities**

- WMD Proliferation
- Terrorism/Terrorist Support
- Unauthorized Military/Govt Use






## “We’re here to help...”

- We can assist you in avoiding illegal transactions.
- We can assist you in avoiding negative publicity.
- We can assist you in avoiding fines and imprisonment.
- We can assist you in avoiding a situation where your company has to pay enormous legal costs resulting from a criminal or administrative proceeding.


**Strengthening our partnership means working together  
to enhance our national security.**



### Export Enforcement Field Offices

- Nine offices nationwide
- Staff

Federal Agents who are criminal investigators empowered to make arrests, carry firearms, execute search warrants, and seize goods about to be exported illegally.



## Office of Export Enforcement Field Office Regions



## Why do we need controls on Dual-Use commodities?

### Top Cape Technologies Cape Town South Africa

**Owner: Asher Karni, (b 1954)**

- Israeli citizen -- MBA from Tel Aviv Univ
- Major in the Israeli military ('71 to '85)
- Emigrated to South Africa to work for a Jewish charity
- Worked for Eagle Technology -- specializes in obtaining sophisticated sensitive equipment...terminated
- Lived on Ocean View Drive, Cape Town SA in exclusive "Millionaires' Row"



### Pakland PME Corporation Islamabad, Pakistan

**Owner: Humayun Khan**

- Supplies Pakistan's conventional and nuclear weapons programs
- Connected to Al Jammu and Kashmir Muslim Conference: Pakistani opposition party that supports extremist fighters in Kashmir, a disputed territory between Pakistan and India



## The Commodities

### Triggered Spark Gap

- ECCN 3A228
- South Africa  
Q - Is License Required?
- Pakistan  
Q - Is License Required?
- \$447 a piece



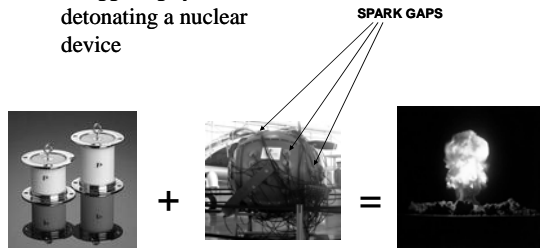
## Civil Use – Spark Gaps

- High speed electrical switches capable of sending synchronized electronic pulses
- Can be used in the medical field as part of lithotripter machines to break up kidney stones



## WMD Use – Spark Gaps

Can be used as part of a triggering system for detonating a nuclear device



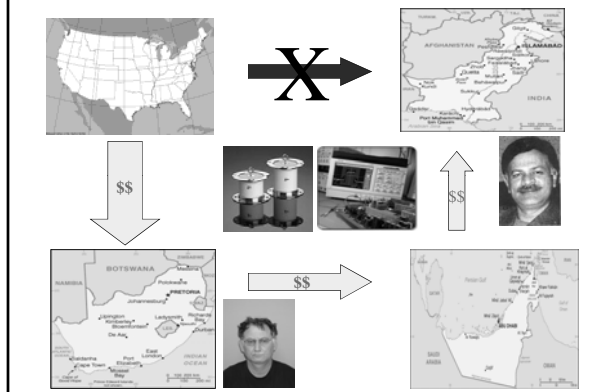
## The Crime...



**Players:** Asher Karni and Humayun Khan

**Crime:** Conspired to ship 200 nuclear trigger devices to nuclear end users in Pakistan

## The Diversion Scheme...



## The rest of the story...

### Asher Karni

- Arrested...Jan 04
- Guilty Plea...Aug 04
- Sentenced 3 years Fed Prison...
  - Released Jan 07
  - Old Sentencing Guidelines
- "I felt shock and horror...how such a devout Jew could be supplying nuclear triggers for the nuclear weapons of a staunch Islamic country."
  - Michael Bagraim, Chairman of the South African Jewish Board of Deputies



ASHER KARNI  
Inmate # 32338-016

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

### Grand Jury INDICTMENT

UNITED STATES OF AMERICA  
v.  
HUMAYUN A. KHAN, Defendant



**VIOLATIONS:** 18 U.S.C. § 371 (Conspiracy)  
50 U.S.C. (Export Admin Act)



## Export Enforcement Investigations and Sanctions

- **Criminal Investigations**
  - Every case
- **Sanctions**
  - Criminal fines and imprisonment
  - Civil fines and penalties
  - Denial of export privileges



## What actions might make a case *Criminal*?

- “Person/company knowingly and willfully...”
  - Knowing that the transaction was controlled (license was required) and proceeding with the export without required authorization.
- Deliberate Ignorance (Self Blinding)
- Corporate Knowledge

## Press Release on a Criminal Case:

“ They did everything they could to evade (the) regulations  
There really was a problem with the corporate culture here – a failure to take responsibility – all the way up to the CEO.  
They made up documents, destroyed documents and made false statements.”

- Julie Myers, Asst. Sec. Export Enforcement



## Criminal Penalties

**Export Administration Regulations - currently enforced under 50 U.S.C. - International Emergency Economic Powers Act (IEEPA)**

- Criminal fine up to \$1,000,000
- Jail time up to 20 years

**Criminal liability for anyone who “willfully conspires to commit, or aids or abets in the commission of” an unlawful act described in the statute.**



## Administrative Sanctions

**Administrative Penalties in Export Administration Regulations:**

- Strict Liability -- knowledge is not a prerequisite for imposition of an administrative penalty
- Administrative violations must be proven by a preponderance of the evidence...51%
- 5 year statute of limitations on administrative enforcement cases



## Administrative Penalties

**IEEPA ENHANCEMENT ACT - (Public Law No. 110-96)**

- Civil fines up to \$250,000 per violation or...
- Twice the amount of the transaction that is the basis of the violation.

### Denial of Export Privileges

“...export privileges under the Export Administration Regulations (EAR) have been denied for 20 years for violating and conspiring to violate the EAR for the unauthorized export and attempted export of industrial commodities from the United States to Iran...”

Standard Denial Order covers all items (commodities, technology, and software) subject to the EAR ...there is no limit on how long we can deny export privileges.



**“This is a fine mess you’ve gotten us into...”**

**Some Typical Causes of Export Violations...**

1. Incomplete Transaction Information
2. Ignoring Red Flags
3. Human Error
4. Incorrect SED Filing
5. Non-Compliance with License Conditions



## 1. Incomplete Transaction Information

- **Unknown end-user**  
24 x 7 Internet Sales - on-line registration/purchase  
"Terrorists who bought this item also bought the following..."
- **Unknown or inappropriate end-use**
- **Multiple parties to a transaction identified**
- **Incorrect product classification**



## 2. Ignoring Red Flags

Ask yourself: "Does this sale make sense?"

- Person placing the order is unfamiliar with product or the end-use.
- Unconventional commercial transactions... funding schemes, in-direct shipping routes, etc.
- Inappropriate end-user: banks, overseas freight forwarders, etc.
- Conflicting information on sales documentation and export routing correspondence.



## 3. Human Factors

- Pressure to meet sales goals and rush order processing
- Inexperienced personnel using outdated documentation or guidance
- Export Manager on vacation - no cross trained back up export managers
- Poor communication with sales staff and foreign distributors



## 4. Incorrect EEI Filing

- Improper use of NLR (No License Required) exemption
- Wrong ECCN entered on EEI
- Incorrect Ultimate Consignee



## 5. Non-Compliance with License Conditions

- Failure to identify and follow all conditions on issued license
  - Failure to identify any conflict of conditions with sales transaction
- \* Seek classification reviews periodically...requirements change



## Voluntary Self-Disclosures

You find a problem...do you really want to turn yourself in?

- Confess early and often...before we hear about it
  - Might not be a violation or just a Warning Letter
- Significant Penalty Mitigation...*half-price* sale
- Tell the truth, the **WHOLE** truth...
- What's the plan: How will you avoid a repeat?
  - Serial VSD's...seriously?

Or do you roll the dice?

- Play the odds...
- If you are a manager - Sarbanes-Oxley Implications...



### True or False?

You shouldn't contact Export Enforcement to report your sleazy competitor, who always seems to secure those shady deals that you refuse to take, because nobody likes a snitch...



### True or False?

You shouldn't contact Export Enforcement to report your sleazy competitor, who always seems to secure those shady deals that you refuse to take, because nobody likes a snitch...

**FALSE** – We want to level the playing field and make law-abiding companies more competitive...



### A Shared Responsibility

*Keeping the most sensitive goods  
out of the most dangerous hands*



### Report Suspicious Transactions

Washington Field Office – 703.487.9300

24 Hour Hot Line - 800.424.2980

[www.bis.doc.gov](http://www.bis.doc.gov)



## Who is OFAC?

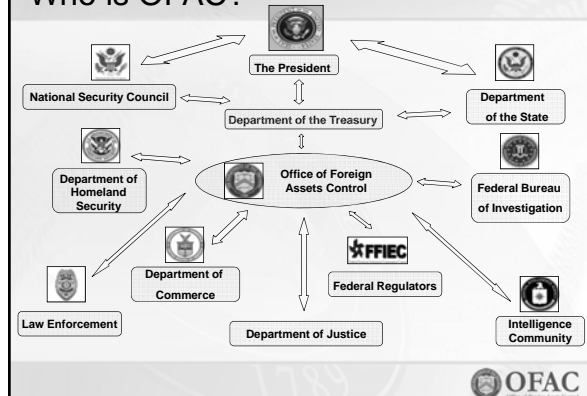
### **Office of Foreign Assets Control (OFAC)** **U.S. Department of the Treasury**

OFAC administers and enforces economic and trade sanctions against targeted:

- Foreign governments
- Individuals
- Entities
- Practices



## Who is OFAC?



## Who is OFAC?

SANCTIONS	EXPORT CONTROLS
<ul style="list-style-type: none"> <li>• Comprehensive use of U.S. economic force based on foreign policy goals</li> <li>• Block assets and restrict trade and financial transactions</li> <li>• Used against specific targets and their agents</li> <li>• OFAC expertise is financial</li> <li>• Jurisdiction is U.S. persons and citizens</li> </ul>	<ul style="list-style-type: none"> <li>• Control dissemination of dual use products and technology to destinations and end users throughout the world</li> <li>• BIS expertise includes engineering and product knowledge used for product classification</li> <li>• Jurisdiction is U.S. persons as well as goods and technology</li> </ul>

## Jurisdiction

### **Individuals**

- U.S. citizens and permanent resident aliens located anywhere in the world
- Individuals, regardless of citizenship, physically located in the United States



### **Corporations**

- organized under U.S. law, including foreign branches of U.S. companies
- physically located in the U.S., including U.S. branches, agencies and representative offices of foreign corporations

## Sanctions Programs

### **Comprehensive Programs**

Counter Narcotics Trafficking  
Non-Proliferation (NPWMD)  
Anti-Terrorism  
Sudan  
Cuba  
Iran

### **Regime-Based Programs**

Former Liberian Regime of Charles Taylor  
Dem. Republic of Congo  
Cote D'Ivoire  
Zimbabwe  
Burma (Myanmar)  
Balkans  
Diamond Trading  
Belarus  
North Korea  
Syria

### **Limited Programs**

## Specially Designated Nationals (SDN)

### **SDNs**

Over 3500 individuals and entities identified by OFAC

Individuals, entities, vessels, banks all over the globe

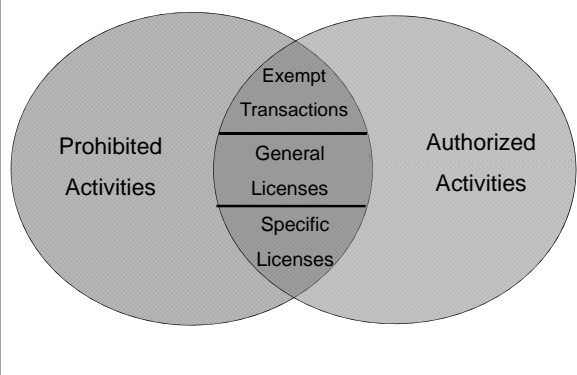
Owned, controlled by or acting on behalf of targeted governments or groups

RECENTLY UPDATED





## Authorized Transactions



## Applying for a Specific License

TSRA Licenses – Agricultural or Medical Products or Devices

*“Dear OFAC...”*



Applicant information  
Banks  
Brokers  
Purchasing agents  
End-users  
Shipment terms  
Payment mechanism



Description of products (include classification under the EAR!)

## Sanctions Enforcement

### Frequent OFAC Violations by Exporters:

Customers or End-Users in sanctioned countries or on the SDN list

Transactions involving SDN's (directly or indirectly)

Financing exports through SDN banks

Relying on an out-of-date SDN list

Violating terms of a specific license

\*Evading or avoiding the sanctions!



## How Does OFAC Hear About Violations?

- Voluntary self-disclosures
- Competitor tips
- Other government agencies
- Transparent financing
- Freight forwarders
- Open-source research

## Sanctions Enforcement



### Civil Penalties (Statutory Maximums):

Trading With the Enemy Act  
\$65,000



International Emergency Economic Powers Act  
\$250,000 (or twice the transaction value)



Foreign Narcotics Kingpin Designation Act  
\$1,075,000

Anti-Terrorism and Effective Death Penalty Act  
\$55,000

## Sanctions Enforcement

- Administrative subpoenas
- Cautionary letters
- Finding of violation letters
- Reputational damage
- Ineligibility for specific licenses
- Referral to DOJ (criminal cases)

## Sanctions Enforcement – 2008 Guidelines

### Characteristics of the Violation

- Willful or reckless
- Sanctions harm
- Timing of violation
- Remediation
- Awareness of conduct

### Characteristics of the Institution

- Individual characteristics
- Compliance program
- Cooperation with OFAC
- Previous enforcement actions
- Future compliance/deterrent effect

- Proportionality / Other relevant factors

## OFAC Compliance Program



## Risk Assessment

Evaluate your institution's risk level and identify specific high risk areas

Customer base	Countries with ties to sanctioned countries or lax export controls
Size and location of company	Trans-shipments or re-exports
Line of business	Brokers/intermediaries
Products offered	Front companies

## Risk Assessment

$$\begin{aligned}
 &\text{Customer Risk} \\
 &+ \\
 &\text{Product Risk} \\
 &+ \\
 &\text{Demographic Risk} \\
 &- \\
 &\text{Program Controls} \\
 &= \\
 &\text{Risk Level}
 \end{aligned}$$

## Internal Controls/Due Diligence

**Screening** is the foundation of an effective compliance policy

**Updating** compliance programs and using the most current SDN list

**Reporting**

**Recordkeeping**

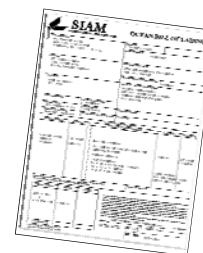


## Internal Controls – Document Review

### Transport Documents

(i.e. bills of lading, air waybills)

- shipping companies
- consignees
- notify parties
- forwarding agents
- ports of loading
- ports of discharge
- ports of transshipment
- final destinations
- shipping vessels
- air carriers



## Internal Controls – Document Review

### Commercial Invoices

- buyers, buyers' agent or final buyers
- sellers
- manufacturers or suppliers
- Incoterms (i.e. CFR, FOB)

### Certificates of Origin

- country origin of goods
- transport details

### Bills of Exchange / Drafts

- drawers
- drawees
- banks (Swift Codes)

## Internal Audit



Characteristics: independent, annual, comprehensive

Purpose: identify weaknesses, remediate, assess action

## Internal Audit

### Should Examine Entire Compliance Program:

- Filtering program
- System performance
- Risk assessment and matrix
- Policies and procedures
- Escalation process
- Internal communication
- External communication
- Record-keeping
- Blocking, reject reports; OFAC licenses
- Training
- Plans for improvement

## Compliance Training & Responsible Persons



New hires, current employees,  
high-risk area teams, management

Document program topics, materials and attendance

On-going basis with annual refreshers

Who's responsible for OFAC compliance at your office?

## Web Resources

### OFAC Homepage

[www.treas.gov/ofac](http://www.treas.gov/ofac)

### Current Sanctions Programs

[www.treas.gov/offices/enforcement/ofac/programs/index.shtml](http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml)

### Frequently Asked Questions

[www.treas.gov/offices/enforcement/ofac/faq/index.shtml](http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml)

### Subscribe to OFAC Alerts

[http://www.treas.gov/offices/enforcement/ofac/abarrs/e\\_notice.shtml](http://www.treas.gov/offices/enforcement/ofac/abarrs/e_notice.shtml)

## Other Resources

### OFAC Compliance Hotline

1-202-622-2490

1-800-540-6322

OFAC\_Feedback@do.treas.gov

Rachel.Nagle@do.treas.gov





U.S. Customs and  
Border Protection

## Automated Export System (AES)

U.S. Census Bureau

## Creation of CBP...

- March 2003
- Customs Service
- Immigration and Naturalization
- Animal and Plant Health Inspection Service
- Border Patrol
- "One Face at the Border"



U.S. Customs and  
Border Protection

Presenter's Name June 17, 2003

## Customs and Border Protection Mission:

Detecting and preventing terrorists and terrorist weapons from entering the United States, while facilitating the orderly and efficient flow of legitimate trade and people at and through our Nation's borders.



U.S. Customs and  
Border Protection

## Census Bureau Final Rule



- June 2, 2008 – Published in the Federal Register
- July 2, 2008 – Effective Date
- Sept. 30, 2008 – Implementation Date



U.S. Customs and  
Border Protection

Presenter's Name June 17, 2003

## Foreign Trade Regulations 15 CFR Part 30

- All export information for which a SED is required must be filed through the AES or AESDirect.
- Electronic Export Information (EEI)
- SEDs no longer accepted.



U.S. Customs and  
Border Protection

Presenter's Name June 17, 2003

## EEI



- Strengthens the U.S. government's ability to prevent the export of certain items by unauthorized parties to unauthorized destinations.
- Aids in the targeting and identifying of suspicious shipments prior to export.
- Improves the quality, timeliness, and coverage of export statistics.



U.S. Customs and  
Border Protection

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## AESDirect

Census Bureau's free internet-based system

Available at:

<http://www.aesdirect.gov/>



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## Timeframes for Filing EEI



### Vessel

- 24 hours prior to loading

### Air

- 2 hours prior to departure  
- 8 hours for USML exports



U.S. Customs and Border Protection

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## Timeframes for Filing EEI



### Truck

- 1 hour prior to arrival of truck at border

### Rail

- 2 hours prior to arrival of train at border



U.S. Customs and Border Protection

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## Annotation Bill of Lading

- The USPPI is responsible for annotating the proper proof of filing citation or exemption legend on the first page of the bill of lading, air waybill, export shipping instructions or other commercial loading documents.
- The USPPI must provide the same to the exporting carrier.
- The exporting carrier must annotate the same on the carrier's outbound manifest.



U.S. Customs and Border Protection

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## Proof of Filing Citations

- Under the final rule, only the **Internal Transaction Number (ITN)** is acceptable as proof of filing citation..
- ITN is the AES generated number assigned to a shipment confirming that an EEI transaction was accepted in the AES.



U.S. Customs and Border Protection

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## AES Filing Citation Example

AES X20100413123456

Filing citation begins with "AES"

ITN always starts with an X

YYYYMMDD

6-digit AES generated number



U.S. Customs and Border Protection

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## Exemption Citation Examples

- Exemption for Shipments to Canada:



NOEEI § 30.36

- Exemption for Low-Value Shipments:

NOEEI § 30.37(a)



< \$2,500 per Schedule B code



Presenter's Name June 17, 2003

## Exclusion Citation Example

In-bond shipments through the United States,  
Puerto Rico, and the U.S. Virgin Islands

NOEEI § 30.2(d)(1)



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## AES Option 4 (Post-Departure)

- A moratorium placed on AES Option 4 applications on August 15, 2003.
- Active AES Option 4 filers not affected by the moratorium.



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## AES Post-Departure Exemption Citation

AESPOST 12345678912 04/13/2010

AES Post-  
Departure

11-digit USPPi Employer  
Identification Number  
(EIN)

MM/DD/YYYY



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## AES Exemptions and Exclusions

- Exemptions and exclusions are listed in:
  - Appendix C to 15 CFR Part 30
  - Attachment 3 to Columbus Pipeline 08-015
- AES filing citations, exemption and exclusion legends are listed in:
  - Appendix D to 15 CFR Part 30
  - Attachment 2 to Columbus Pipeline 08-015



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## Common Errors

### 1. Port of Export

§ 30.1(c) Definitions



**Port of export.** The seaport or airport where the goods are loaded on the exporting carrier that is taking the goods out of the United States, or port where exports by overland transportation cross the U.S. border into a foreign country. In the case of an export by mail, use port code 8000



Presenter's Name June 17, 2003

## Penalties



- New Subpart H created by final rule to cover FTR penalty provisions.
- Penalties for failure to file EEI or delayed filing of EEI increased from \$100 to \$1,100 for each day of delinquency.
- Maximum penalty per violation increased from \$1,000 to \$10,000.



Presenter's Name June 17, 2003

## Penalties - continued

- New penalty provisions for situations when the filer:
  - knowingly fails to file.
  - files false and/or misleading information.
- Subject to a fine not to exceed \$10,000 or imprisonment for not more than five years, or both.



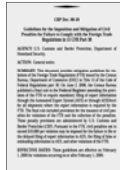
Presenter's Name June 17, 2003



## CBP Decision 08-50

**Guidelines for the Imposition and Mitigation of Civil Penalties for Failure to Comply with the Foreign Trade Regulations in 15 CFR Part 30.**

- Effective February 1, 2009
- Available on cbp.gov at:



[http://www.cbp.gov/xp/cgov/trade/legal/bulletins\\_decisions/bulletins\\_archives/bulletins\\_2008/vol42\\_10162008\\_no43/](http://www.cbp.gov/xp/cgov/trade/legal/bulletins_decisions/bulletins_archives/bulletins_2008/vol42_10162008_no43/)

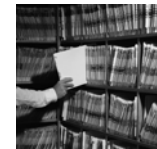


Presenter's Name June 17, 2003

## Recordkeeping Requirements

§ 30.10 (a) Retention of export information.

All parties to the export transaction shall retain documents pertaining to the export shipment for five years from the date of export.



Presenter's Name June 17, 2003

## Enforcement

### § 30.73 Enforcement

(b) *Department of Homeland Security*

ICE and CBP may enforce the provisions of this part, and ICE, as assisted by CBP may conduct investigations under this part.

CBP – Field Operations

ICE – Office of Investigations



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## Enforcement - continued

§ 30.10(b) *Authority to require production of documents.*

For purposes of verifying the completeness and accuracy of information reported as required under § 30.6 .....all parties to the export transaction shall provide upon request to the Census Bureau, CBP, ICE, BIS and other participating agencies, EEI, shipping documents, invoices, orders, packing lists, and correspondence as well as any other relevant information bearing upon a specific export transaction at anytime within the five year time period.




Presenter's Name June 17, 2003


# <http://www.census.gov/foreign-trade/aes/index.html>

# **CBP – Port of Columbus**

6431 Alum Creek Drive, Suite A  
Groveport, Ohio 43125  
(614) 497-1865



Port Director – Craig L. Vette  
[craig.l.vette@dhs.gov](mailto:craig.l.vette@dhs.gov)




U.S. Customs and  
Border Protection


Presenter's Name June 17, 2003

# **CBP – Port of Dayton**

3800 Wright Drive  
Vandalia, Ohio 45377  
(937) 890-7633



Port Director – Brooke A. Jansen  
[brooke.jansen@dhs.gov](mailto:brooke.jansen@dhs.gov)




U.S. Customs and  
Border Protection

Presenter's Name June 17, 2003

**CBP – Port of Cincinnati**

4243 Olympic Blvd.  
Suite 120  
Erlanger, Kentucky 41018  
(859) 282-6308

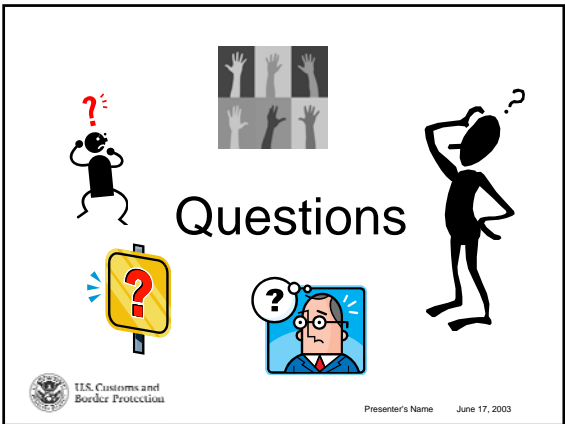


Port Director – Timothy T. Willard



U.S. Customs and  
Border Protection

Presenter's Name      June 17, 2003





## Ports of Export Courier Website Tools

### **Title 15: Commerce and Foreign Trade**

[PART 30—FOREIGN TRADE REGULATIONS](#)

[Subpart A—General Requirements](#)

#### **§ 30.1 Purpose and definitions.**

*Port of export.* The seaport or airport where the goods are loaded on the exporting carrier that is taking the goods out of the United States, or the port where exports by overland transportation cross the U.S. border into a foreign country. In the case of an export by mail, use port code 8000.

**DHL:**

[http://www.dhl-usa.com/resources/DHLPortsofExports\(ITARRoutings\).pdf](http://www.dhl-usa.com/resources/DHLPortsofExports(ITARRoutings).pdf)

**FED EX:**

<https://www.fedex.com/SEDINFO>

**UPS:**

[http://www.ups.com/media/en/sed\\_port\\_export.xls](http://www.ups.com/media/en/sed_port_export.xls)

*DISCLAIMER: This material is intended to provide guidance. Recognizing that many complicated factors are involved in Customs and Border Protection matters, an importer may wish to obtain a binding ruling under 19 CFR Part 177. Reliance solely on this information may not be considered reasonable care. Importers are referred to Treasury Decision 97-96, which was published in the Federal Register of December 4, 1997, and in the Customs Bulletin of December 17, 1997, for in-depth information on the concept of reasonable care.*



## U.S. Customs and Border Protection

June 23, 2008

Number 08-015

### **PORT OF COLUMBUS PIPELINE**

**TO** : Exporters, U.S. Principal Parties in Interest, Authorized Agents, Freight Forwarders, Exporting Carriers, Customs Brokers, Customs and Border Protection Officers, and Other Interested Parties.

**SUBJECT:** Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration information

Section 343(a) of the Trade Act of 2002, as amended by section 108 of the Maritime Transportation Security Act of 2002, required the Secretary of the Treasury (transferred to the Secretary of Homeland Security by the Homeland Security Act of 2002) to promulgate regulations that provide for the mandatory collection of electronic cargo information prior to the departure of cargo from the United States by any mode of commercial transportation. Customs and Border Protection (CBP) regulations pertaining to electronic export information were created by final rule on December 5, 2003 and are contained in 19 CFR 192.14. The compliance date for these regulations was contingent upon the redesign of CBP's Automated Export System (AES) commodity module and the effective date of Department of Commerce regulations pertaining to mandatory electronic filing of export information

The U.S. Census Bureau recently issued a final rule implementing provisions in the Foreign Relations Authorization Act, Public Law 107-228. This rule was published in the Federal Register on June 2, 2008 (73 FR 31548), amending Title 15, Code of Federal Regulations, Part 30, Foreign Trade Regulations (FTR) [formerly the Foreign Trade Statistics Regulations (FTSR)] in its entirety. The final rule may be viewed at the following website:  
<http://edocket.access.gpo.gov/2008/pdf/E8-12133.pdf>.

Under the final rule, the Census Bureau is requiring mandatory filing of export cargo information through the AES or through *AESDirect* (the Census Bureau's free Internet-based system) for all shipments where a Shipper's Export Declaration (SED) was previously required. The electronic reporting of export trade data through AES and *AESDirect* is referred to as Electronic Export Information (EEI). EEI strengthens the U.S. government's ability to prevent the export of certain items by unauthorized parties to unauthorized destinations and end users, by aiding in the targeting and identifying of suspicious shipments prior to export. It also affords the government the ability to significantly improve the quality, timeliness, and coverage of export statistics.

The effective date of the Census Bureau Final rule is July 2, 2008. However, to allow all affected entities sufficient time to come into compliance with this rule, the Census Bureau will implement the provisions of the rule on September 30, 2008. Accordingly, as a result of the

publication of the Census Bureau regulations and completion of the redesign of the AES commodity module, the compliance date for the CBP regulations pertaining to pre-departure electronic filing of export cargo information, pursuant to 19 CFR 192.14(e), will coincide with the implementation date of the final rule, September 30, 2008.

### **Pre-Departure Time Frames for Filing EEI**

The time frame for pre-departure filing of EEI varies according to method of transportation pursuant to 19 CFR 192.14(b) and 15 CFR 30.4(b). A list of the various time-frame requirements by mode of transportation is provided in attachment 1 to this pipeline.

Shipments on the State Department U.S. Munitions List (USML) [Part 121 of the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130)] are subject to different time-frame requirements. Time frames for shipment on the USML are also listed in attachment 1.

### **Post-Departure Filing of EEI**

A moratorium was placed on AES Option 4 (post-departure filing) applications on August 15, 2003 (see notice at <http://www.census.gov/foreign-trade/aes/>). In agreement with CBP and the Census Bureau, this moratorium will remain in effect pending further review of the post-departure filing program. Active AES Option 4 filers are not affected by the moratorium.

### **Proof of AES Filing Citations, Exemption and Exclusion Legends**

The U.S. principal party in interest (USPPI) or authorized agent is responsible for annotating the proper proof of filing citation, post-departure filing citation, AES downtime filing citation, or exemption or exclusion legend on the first page of the bill of lading, air waybill, export shipping instructions or other commercial loading documents pursuant to 15 CFR 30.7. Appendix D of the FTR contains properly formatted proof of filing citations and exemption or exclusion legends. The information contained in Appendix D of the FTR is listed in attachment 2 to this pipeline.

Under the final rule, only the Internal Transaction Number (ITN) is acceptable as the proof of filing citation. The ITN confirms that the shipment information has been accepted in the AES. The External Transaction Number (XTN) will no longer be accepted as proof of filing.

The USPPI or authorized agent is also required to deliver the proof of filing citations and exemption or exclusion legends required in 15 CFR 30.7 (see attachment 2) to the exporting carrier in accordance with the time periods set forth in § 30.4(b) (see attachment 1).

### **Exemptions and Exclusions from EEI Filing**

As stated above, the final rule amends Title 15, Code of Federal Regulations, Part 30, in its entirety. Exemptions from the requirements for the filing of EEI are now provided for in Subpart D and exclusions from EEI filing are provided for in Subpart A. Appendix C to Part 30 has been added to provide a summary of all FTR exemptions and exclusions from EEI filing. The information contained in Appendix C is listed in attachment 3 to this pipeline.

## **Exporting Carrier Requirements**

Carrier and manifest issues are consolidated in Subpart E of the FTR. Requirements for SEDs being attached to the manifest are replaced with requirements for proof of filing citations and/or exemption legends to be shown on the outbound cargo manifest, bill of lading, air waybill, or other commercial loading documents attached to the manifest. Exporting carriers shall not accept paper SEDs under any circumstances nor load cargo that does not have a proof of filing citation, or exemption or exclusion legend as provided in Appendix D (see [attachment 2](#)). Exporting carriers accepting paper SED or loading cargo without all proof of filing citations, exemption or exclusion legends are subject to the penalties provided for in Subpart H.

Exporting carriers are responsible for presenting the appropriate proof of filing citation or exemption legend to the CBP Port Director at the port of export. Such presentation shall be without material change or amendment from the proof of filing citation or exemption legend as provided to the carrier from the USPPI or the authorized agent.

## **Penalties**

A new Subpart H has been created by the final rule to cover the FTR penalty provisions formerly addressed in § 30.95 of the FTSR. New penalty provisions addressed in Subpart H describe the increase in penalties that may be imposed for violations. Penalties for failure to file EEI or delayed filing of EEI have increased from \$100 to \$1,100 for each day of delinquency. The maximum penalty per violation has increased from \$1,000 to \$10,000.

The new penalty provisions also provide for situations when the filer knowingly fails to file, files false and/or misleading information and other violations of the FTR. Any person, including USPPIs, authorized agents or carriers, who knowingly fails to file or knowingly submits, directly or indirectly, to the U.S. Government, false or misleading export information through the AES, shall be subject to a fine not to exceed \$10,000 or imprisonment for not more than five years, or both, for each violation.

Finally, for exporting carriers using incomplete manifesting procedures, the penalty for each day's delinquency of filing a complete manifest beyond the prescribed bond period has been increased from \$50 (first three days)/\$100 (each succeeding day) to \$1,100 per day and the maximum per violation increased from \$1,000 to \$10,000.

Should you have any questions concerning this pipeline, please contact Craig L. Vette at 614-497-1865.

[signed]  
Craig L. Vette  
Port Director

Attachments

### Time Frames for Filing EEI for Exports

Mode of Transportation	Time Frame Requirement	Regulation
Vessel	No later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden	15 CFR 30.4(b)(2)(i) 19 CFR 192.14(b)(1)(i)
Air	No later than 2 hours prior to scheduled departure time of the aircraft	15 CFR 30.4(b)(2)(ii) 19 CFR 192.14(b)(1)(ii)
Truck	No later than 1 hour prior to the arrival of the truck at the U.S. border	15 CFR 30.4(b)(2)(iii) 19 CFR 192.14(b)(1)(iii)
Rail	No later than 2 hours prior to the arrival of the train at the U.S. border	15 CFR 30.4(b)(2)(iv) 19 CFR 192.14(b)(1)(iv)
Mail and cargo shipped by other methods, except pipeline	No later than 2 hours prior to exportation	15 CFR 30.4(b)(2)(v)
All other modes	No later than 2 hours prior to exportation	15 CFR 30.4(b)(2)(vi)
Pipeline	No later than four calendar days following the end of the month	15 CFR 30.46

### Time Frames for Filing EEI for State Department USML Exports

Mode of Transportation	Time Frame Requirement	Regulation
Air or Truck	At least 8 hours prior to departure	22 CFR 123.22(b)(i)
Sea or Rail	At least 24 hours prior to departure	22 CFR 123.22(b)(ii)

## Appendix D to Part 30

## AES Filing Citation, Exemption and Exclusion Legends

I.	USML Proof of Filing Citation	AES ITN example: <a href="#">AES X20060101987654</a>
II.	AES Proof of Filing Citation, Subpart A, § 30.7	AES ITN example: <a href="#">AES X20060101987654</a>
III.	AES Postdeparture Citation-USPPI is filing the EEI	AESPOST USPPI EIN mm/dd/yyyy example: <a href="#">AESPOST 12345678912 01/01/2006</a>
IV.	Postdeparture Citation-Agent	AESPOST USPPI EIN-Filer ID mm/dd/yyyy example: <a href="#">AESPOST 12345678912-987654321 01/01/2006</a>
V.	AES Downtime Citation-Use only when AES or AESDirect is unavailable	AESDOWN Filer ID mm/dd/yyyy example: <a href="#">AESDOWN 123456789 01/01/2006</a>
VI.	Standard Exclusions are found in 15 CFR 30, Subpart A, § 30.2(d)(1) through § 30.2(d)(4). The following types of transactions shall be excluded from EEI filing: (1) Inbond Shipments through the United States, Puerto Rico, and the U.S. Virgin Islands (2) Goods Shipped from U.S. territories * (3) Electronic transmissions and intangible transfers (4) Goods Shipped to or from Guantanamo Bay Naval Base in Cuba and the United States	<a href="#">NOEEI § 30.2(d)(site corresponding number)</a>
VII.	Exemption for Shipments to Canada	<a href="#">NOEEI § 30.36</a>
VIII.	Exemption for Low-Value Shipments	<a href="#">NOEEI § 30.37(a)</a>
IX.	Miscellaneous Exemption Statements are found in 15 CFR 30 Subpart D § 30.37(b) through § 30.37(u)	<a href="#">NOEEI § 30.37(site corresponding alphabet)</a>
X.	Special Exemption for Shipments to the U.S. Armed Forces	<a href="#">NOEEI § 30.39</a>
XI.	Special Exemptions for Certain Shipments to U.S. Government Agencies and Employees (Exemption Statements are found in 15 CFR 30 Subpart D § 30.40(a) through § 30.40(d).	<a href="#">NOEEI § 30.40(site corresponding alphabet)</a>
XII.	Split Shipments by Air "Split Shipments" should be referenced as such on the manifest in accordance with provisions contained in § 30.28, "Split Shipments by Air". The notation should be easily identifiable on the manifest. It is preferable to include a reference to a split shipment in the exemption statements cited in the example. the notation SS should be included at the end of the appropriate exemption statement.	AES ITN SS example: <a href="#">AES X20060101987654 SS</a>
XIII.	Proof of filing citations by pipeline	<a href="#">NOEEI § 30.8(b)</a>

\* *Except the U.S. Virgin Islands*

## Appendix C to Part 30

## A. EEI is not required for the following types of shipments

1.	Exemption for shipments destined to Canada	\$ 30.36
2.	Valued \$2,500 or less per Schedule B/HTSUSA classification for commodities shipped from one USPP1 to one consignee on a single carrier	\$ 30.37(a)
3.	Tools of the trade and their containers that are usual and reasonable kinds and quantities of commodities and software intended for use by individual USPP1s or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the USPP1 abroad	\$ 30.37(b)
4.	Shipments from one point in the United States to another point in the United States by routes passing through Canada or Mexico.	\$ 30.37(c)
5.	Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States.	\$ 30.37(d)
6.	Shipments transported inbound through the United States for export to a third country and exported from another U.S. port or transshipped and exported directly from the port of arrival never having made entry into the United States. If entry for consumption or warehousing in the United States is made, then an EEI is required if the goods are then exported to a third country from the United States.	\$ 30.37(e)
7.	Exports of technology and software as defined in 15 CFR 772 of the EAR that do not require an export license. However, EEI is required for mass-market software.	\$ 30.37(f)
8.	Shipments to foreign libraries, government establishments, or similar institutions, as provided in FTR Subpart D § 30.40(d).	\$ 30.37(g)
9.	Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations (EAR 15 CFR 740.12).	\$ 30.37(h)
10.	Diplomatic pouches and their contents.	\$ 30.37(i)
11.	Human remains and accompanying appropriate receptacles and flowers	\$ 30.37(j)
12.	Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate. This excludes highly technical plans, correspondence, etc. that could be licensed.	\$ 30.37(k)
13.	Shipments of pets as baggage of persons leaving the United States.	\$ 30.37(l)
14.	Carrier's stores, not shipped under a bill of lading or an air waybill, supplies and equipment, including usual and reasonable kinds and quantities of bunker fuel, deck engine and steward department stores, provisions and supplies, medicinal and surgical supplies, food stores, slop chest articles, and saloon stores or supplies for use or consumption on board and not intended for unloading in a foreign country.	\$ 30.37(m)
15.	Dunnage not shipped under a bill of lading or an air waybill, of usual and reasonable kinds and quantities not intended for unloading in a foreign country.	\$ 30.37(n)
16.	Shipments of aircraft parts and equipment; food, saloon, slop chest, and related stores; and provisions and supplies for use on aircraft by a U.S. airline [EAR license exception AVS for aircraft and vessels (15 CFR 740.15(b))].	\$ 30.37(o)

17.	Baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States including members of crews on vessels and aircraft, when they are not shipped as cargo under a bill of lading or an air waybill and do not require an export license.	\$ 30.37(p)
18.	Temporary exports, whether shipped or hand carried, (e.g., carnet) that are exported from and returned to the United States less than one year (12 months) from date of export.	\$ 30.37(q)
19.	Goods previously imported under Temporary Import Bond for return in the same condition as when imported including: goods for testing, experimentation, or demonstration; goods imported for exhibition; samples and models imported for review or for taking orders; goods for participation in races or contests; and animals imported for breeding or exhibition and imported for use by representatives of foreign government or international organizations or by members of the armed forces of a foreign country. Goods that were imported under bond for processing and re-exportation are not covered by this exemption.	\$ 30.37(r)
20.	Issued banknotes and securities and coins in circulation exported as evidence of financial claims. The EEI must be filed for unissued bank notes and securities and coins not in circulation (such as bank notes printed in the United States and exported in fulfillment of the printing contract or as part of collections), which should be reported at their commercial or current value.	\$ 30.37(s)
21.	Documents used in international transactions, documents moving out of the United States to facilitate international transactions including airline tickets, internal revenue stamps, liquor stamps, and advertising literature. Export of such documents in fulfillment of a contract for their production, however, are not exempt and must be reported at the transaction value for their production.	\$ 30.37(t)

**B. The following types of transactions are outside the scope of the FTR and shall be excluded from EEI filing**

1.	Goods shipped under CBP bond through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another where such goods do not enter the consumption channels of the United States	\$ 30.2(d)(1)
2.	Goods shipped from the U.S. territories of Guam Island, American Samoa, Wake Island, Midway Island, and Northern Mariana Islands to foreign countries or areas, and goods shipped between the U.S. and these territories.	\$ 30.2(d)(2)
3.	Electronic transmission and intangible transfers. See FTR, Subpart B, for export control requirements for these types of transactions.	\$ 30.2(d)(3)
4.	Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands. (See FTR Subpart D, § 30.39 for filing requirements for shipments exported by the U.S. Armed Services.)	\$ 30.2(d)(4)



# Complying with U.S. Export Laws



## **Presenter Biographies**

**Sharron Cook**  
**Senior Export Policy Analyst**  
**Bureau of Industry and Security**

Sharron Cook is a Senior Export Policy Analyst that has been working for the Bureau of Industry and Security of the Department of Commerce for 24 years. She has been a licensing officer of electronics, computers, and telecommunications. For the past 16 years she has been developing and implementing export policy, as well as revising and updating the Export Administration Regulations (EAR), counseling and educating industry and government employees, and participating at the Wassenaar Arrangement Expert Group meetings. She is also the Editor of the EAR.

**Rick L. Shimon**  
**Criminal Investigator**  
**Office of Export Enforcement**  
**Bureau of Industry and Security, U.S. Department of Commerce**

Mr. Shimon has served as a criminal investigator in the Department of Commerce, Office of Export Enforcement (OEE) since August 2003. He was hired as the Assistant Director for Operations responsible for National Security/WMD intelligence assessments, international non-proliferation programs, as well as law enforcement support to the OEE field offices. In December 2006, Rick was selected as the Special Agent in Charge of the Washington Field Office and oversees criminal investigations in the nine state Mid-Atlantic regions.

Prior to his assignments in Export Enforcement, Shimon was the Special Agent in Charge of the National Security Division, National Oceanic and Atmospheric Administration, Washington DC and was charged with enforcing United States law regarding the operation of remote sensing satellite systems.

Mr. Shimon holds a Bachelors Degree in Astrophysics and a Masters Degree in Public Administration.

**Rachel Nagle**

**Member of the Compliance, Outreach, and Implementation team  
Treasury Department's Office of Foreign Assets Control**

Ms. Nagle has been a member of the Compliance, Outreach and Implementation team at the Treasury Department's Office of Foreign Assets Control (OFAC) since 2006. She plays a dynamic role in implementing and enforcing U.S. economic sanctions. She provides practical advice on a daily basis to financial institutions from around the world on OFAC compliance issues and routinely interacts with her regulatory and private industry peers through outreach events across the country.

**Craig Vette**

**Port Director of U.S. Customs and Border Protection  
Port of Columbus, Ohio**

Craig Vette is the Port Director of U.S. Customs and Border Protection (CBP) at the port of Columbus, Ohio, a major trade port for the importation of wearing apparel. He received his B.A. in accounting from Moorhead State University, Moorhead, Minnesota in 1977 and began work as an internal auditor with U.S. Customs in 1978. During his 32 year career with Customs, he has worked in Chicago, Bermuda, Edmonton, Toledo and Columbus.